

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD C. HYNES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal no. 02-80889-08

Civil no. 08-10517

Honorable John Corbett O'Meara

ORDER GRANTING CERTIFICATE OF APPEALABILITY

This matter came before the court on petitioner Donald C. Hynes' notice of appeal and request for a certificate of appealability pursuant to 28 U.S.C § 2255. In response to Petitioner's notice of appeal, this court must demonstrate whether to issue a certificate of appealability.

In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.

Fed. R. App. P. 22(b). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that the court could resolve the issues [in a different manner] or that the questions are 'adequate to deserve encouragement to proceed further.'

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Hence v. Smith, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

The court finds that petitioner Hynes has made a substantial showing of the denial of a constitutional right. Therefore, it is hereby **ORDERED** that the request for a certificate of appealability is **GRANTED**.

s/John Corbett O'Meara
United States District Judge

Date: November 4, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, November 4, 2010, using the ECF system, and upon Petitioner at Lexington, FMC by first-class U.S. mail.

s/William Barkholz
Case Manager